

THE NEW OHIO WORKMEN'S COMPENSATION ACT

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The General Assembly on June 24, 1955 passed Amended Substitute House Bill 700, the greatest change in the Ohio workmen's compensation laws since 1925. This bill was approved by the Governor on July 6, 1955, and was filed in the office of the Secretary of State on the same day. The effective date, therefore, is October 5, 1955.

This bill created the new Bureau of Workmen's Compensation headed by an Administrator, sharply limited the powers of the present Industrial Commission, provided for an advisory council on workmen's compensation, made substantial increases in benefits, and drastically revised the system for processing and adjudicating claims both before the bureau and commission as well as upon appeal to the courts.

LEGISLATIVE HISTORY

It was apparent to most observers subsequent to the adjournment of the 100th General Assembly that one of the major problems to confront the 101st General Assembly would be the matter of revision of the workmen's compensation laws. House Bill 552, sponsored by Mr. Sexton of Butler County, had failed passage in the House Industry and Labor Committee by a single vote. This bill had been one of the most controversial bills before the 100th General Assembly and was one of the bills most bitterly contested between industry and labor. Indeed, this session of the legislature was the first time in some seventeen years during which an agreed bill had not been submitted to the General Assembly by the representatives of industry and labor. Following the adjournment of the 100th General Assembly this subject was a high priority item on the agenda of the Legislative Service Commission, and an intense study was made of both the law and practice pertaining to the Industrial Commission. Following the organization of the 101st General Assembly in January of 1955, no less than five major bills were dropped in the hopper, all dealing with drastic changes in the workmen's compensation laws. These were House Bill 243, the labor bill; House Bill 454, the governor's bill; House Bill 554, introduced by Representative Troop, Chairman of the House of Industry and Labor Committee; House Bill 624, introduced by Representatives Wheeler and Whalen, members of the House Industry and Labor Committee; and House Bill 700, introduced by Mr. Wheeler.

After attempts were made to hold hearings on the various bills, it was the feeling of the committee that more progress could be made if the bills were referred to a sub-committee, with an attempt to bring forth an omnibus bill. Consequently a sub-committee consisting of Messrs. Troop, Bettman, Whalen, Wheeler, Sullivan, Killbane and Connors took these matters under consideration. After intensive study and consultation, it was the conclusion of the sub-committee that rather than to

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present to the full committee an omnibus bill or bills, it should submit for consideration an outline of what it felt would be appropriate to include in such bills. After consultation was had among the various committee members, there emerged amended substitute House Bill 700 sponsored by Messrs. Wheeler, Troop and Bettman. This bill was entitled "An Act to create the bureau of workmen's compensation, to define the powers of the administrator thereof, to increase compensation to injured workmen and for that purpose to amend sections 4123.07, 4123.56, 4123.57, 4123.58, 4123.59, 4123.66, to enact sections 4121.121, 4121.122, 4121.123, 4121.124, 4121.131, 4123.141, 4123.151, 4123.152, 4123.511, 4123.512, 4123.513, 4123.514, 4123.515, 4123.516, 4123.517, 4123.518, 4123.519, 4123.521, 4123.522, and 4123.651, and to repeal sections 4121.12, 4123.14, 4123.15, 4123.16 and 4123.51 of the Revised Code."

When the bill was set for first hearing by the Chairman of the House Committee, the representatives of interested groups were almost unanimously opposed to the bill as it then read, although for widely divergent reasons. One of the most widely controversial provisions of the bill at that time was the abolition of trial by jury upon appeal from the finding of the Industrial Commission, and a substitution therefore of an appeal to the appropriate court of appeals, such appeal being on questions of law and the preponderance of the evidence, with the Industrial Commission's claim file making up the evidence upon which the court would pass. Following two stormy sessions of the Committee, during which a jury trial amendment was introduced, passed and then stricken from the bill and the original wording inserted, the bill was recommended for passage by a vote of nine to seven. By the time the bill reached the floor of the House, it had become a majority "policy" bill. Despite this fact, a member of the majority rose on the floor and offered an amendment to the bill restoring the appeal to the common pleas court with a jury trial upon the record made before a regional board, and upon no other evidence. This amendment was carried by a vote of seventy to sixty-two. The bill was then sent to the Senate, where the Commerce and Labor Committee amended it by substitution of what it understood to be "trial de novo" for trial upon a transcript of evidence.

ADMINISTRATIVE CHANGES

The new act creates an agency known as the Bureau of Workmen's Compensation, to be headed by an Administrator appointed by the Governor with the advice and consent of the Senate, serving for a term of six years at an annual salary of twelve thousand dollars.¹ The costs of the Bureau are to be considered administrative costs as defined in OHIO REV. CODE §4123.341.

In addition to his quasi-judicial power discussed later, the Administrator is vested with ministerial power to perform all acts required of

¹ OHIO REV. CODE §4121.12.

and vested in the Industrial Commission under Chapter 4123 of the Revised Code except such authority and power as is vested in the commission in OHIO REV. CODE §4121.13. This power includes such matters as the gathering of information and completion of statistics to aid the commission in the preparation of classification of occupations, premium rates and contributions, rules and systems of rating, rate revisions and merit ratings.² The Administrator exercises the investment powers formerly vested in the Industrial Commission relative to the state insurance fund, subject to the approval of the commission.³ The acts of the Administrator or of his deputies within the scope of the authority conferred upon them are deemed by the statute to be the acts of the commission.⁴ The Act requires that the Administrator decentralize the activities of the Bureau and that for that purpose he establish regional offices.⁵

The Act creates a Workmen's Compensation Advisory Council, consisting of seven members, whose duties are to conduct research, make and publish reports and to recommend to the Administrator, the Industrial Commission, the Governor or the Legislature needed changes in law or in the rules and regulations of the Bureau of Workmen's Compensation or the Industrial Commission.⁶

By a rather unique statutory directive, the Administrator is empowered to prepare blank forms of application for benefits, etc. and the statute specifically provides that the forms should be so prepared that the furnishing of information required of any person with respect to any aspect of a claim shall not be delayed by a requirement that information with respect to another aspect of such claim shall be furnished on the form by the same or another person. This is an apparent attempt to abolish by legislation the tripartite form used by the Industrial Commission prior to the passage of the new act,⁷ and which received much criticism during the legislative hearings.

A restatement of the powers, authority, duties and jurisdiction of the Industrial Commission is contained in the new legislation.⁸ This section replaces OHIO REV. CODE §4121.13, repealed in the new act. Old OHIO REV. CODE §4123.14, which section established the boards of claims, has been repealed and re-enacted creating five regional boards of review, consisting of three members each, at an annual salary of seventy-five hundred dollars. The board members serve for terms of six years, one member to represent labor, one member to represent in-

² OHIO REV. CODE §4121.121(E).

³ OHIO REV. CODE §4121.121(F).

⁴ OHIO REV. CODE §4121.121(I). Is this an attempt to assure the validity of creation and decisions by the administrator as against constitutional challenge? See OHIO CONST. ART. II, §35 (1925), *DeTorio v. Industrial Commission*, 135 Ohio St. 214, 20 N.E. 2d, 248 (1939).

⁵ OHIO REV. CODE §4121.121(K).

⁶ OHIO REV. CODE §4121.123.

⁷ OHIO REV. CODE §4121.07.

⁸ OHIO REV. CODE §4121.131.

dustry, and the third to be an attorney, to serve as chairman. The purpose of these boards will be discussed in this article under the discussion of the appeals procedure, as will the new medical advisory boards, which boards replace the old medical boards of review, dissolved by the repeal of old OHIO REV. CODE §4123.15.⁹

Only the Industrial Commission or a regional board of review has the power to ask that the medical questions in a given claim be submitted to a medical advisory board. It is interesting to note that this medical advisory board differs from the old medical boards of review in that the board has the power to hold oral hearings, examine the claimant, such witnesses and records as it may desire, and is given the authority to administer oaths, take testimony, cause depositions to be taken and to subpoena witnesses and documents. The board is required to reduce its findings to writing and to submit the same to the tribunal requesting the review, but the major substantive difference between the medical advisory board as now constituted and the old medical boards of review is the provision that its findings shall not be binding upon either the Commission or the regional board, whereas under the former law the findings of the Medical Board of Review was final and binding.¹⁰

DETERMINATION OF CLAIMS IN APPELLATE PROCEDURE

OHIO REV. CODE §4123.51, known to many practitioners as "Section 90", was completely repealed in the new act. This section was the provision empowering the Industrial Commission with full power and authority to hear and determine all claims. It imposed a mandatory duty upon the Commission definitely and specifically to pass upon every issue raised in a claim, to make its orders definite and certain; provided that upon failure to do so an action in mandamus would lie requiring it to perform the acts commanded by the statute; established the right to rehearing; established procedures for taking of testimony on rehearing, and provided for an appeal by the claimant from an adverse decision to the court of common pleas of proper venue upon the testimony adduced before the Industrial Commission on rehearing and on no other evidence. The statute further provided for an attorney fee to be taxed as part of the costs in such appeal if the claimant was successful in his appeal to the common pleas court.

The Industrial Commission is now relieved of any jurisdiction to hear and determine validity of claims involving payment of compensation at the inception of the claim. The statute now contemplates that upon the receipt of any claim under OHIO REV. CODE, CHAPTER 4123, except as provided in OHIO REV. CODE §4121.131; the Administrator shall notify all interested parties and commence immediate investigation.¹¹

⁹ OHIO REV. CODE §4123.15.

¹⁰ OHIO REV. CODE §4123.151.

¹¹ OHIO REV. CODE §4123.512. From a comparison of the various jurisdictional statutes, some question has arisen as to the legislative intent embodied in §4123.512.

Under certain circumstances the Administrator may make an award without the claimant himself making written application.¹² If the Administrator determines that the employee has a valid claim he shall notify the employer in writing of his determination, and payment of award shall begin on the day of the receipt of the employer's statement that the claim is valid, or on the tenth day after mailing of notice to the employer that an award is made, whichever day is earlier. The same period of time is applicable to the payment of claims involving medical expense only.¹³

Prior to the conclusion of the investigation of a claim the Administrator may make a tentative order awarding compensation if in his opinion the claim is probably valid. If such tentative order is made the Administrator must notify the employer in writing of the nature and amount of the tentative order. Unless objection is filed within ten days following the date of mailing of such notice, the tentative order becomes a final award and compensation is paid. If objections are filed with the Administrator the claim is forthwith set for hearing under the provisions of OHIO REV. CODE §4123.515.¹⁴

If it appears to the Administrator that a claim is disputed he is directed to afford to the claimant and the employer an opportunity for a hearing with the right to either party to present testimony and facts pertinent to the claim. This hearing must be had on disputed claims before the Administrator is empowered to allow or deny the claim. Upon such hearing the Administrator is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and no record need be made. At the conclusion of the hearing the Administrator shall concisely state his decision and the reasons therefor and shall mail copies of his findings to the parties.¹⁵

Reconsideration of this decision may be had by either party if within nine days of the date of mailing of the decision under OHIO REV. CODE §§4123.513 or 4123.515, an application for reconsideration is filed with the Administrator.¹⁶

For the practitioner it is important to note in this section as well as in the other sections of the new act dealing with appeals that for the first time the period within which a party may file his appeal begins to run from the date of mailing of the notice of the finding. Under former

Does the statute contemplate that the administrator shall hear and pass upon claims of employees who are seeking the right to participate for the first time, or does his jurisdiction include such matters as applications for partial disability awards, modifications of previous awards, increases in average weekly wages, and other matters wherein the claimant seeks the right to further participate under the act? Compare OHIO REV. CODE §§4123.52, 4123.57, 4123.59, 4123.60 and 4123.75.

¹² OHIO REV. CODE §4123.512.

¹³ OHIO REV. CODE §4123.513.

¹⁴ OHIO REV. CODE §4123.514.

¹⁵ OHIO REV. CODE §4123.515.

¹⁶ OHIO REV. CODE §4123.515.

OHIO REV. CODE §4123.51 all of the periods for filing of appeals began to run from the date of receipt of notice by the claimant.

In any case wherein the Administrator grants an award of compensation, payment of the award must commence ten days following the date of the decision. An appeal from the decision of the Administrator when an award has been made does not stay the payment of compensation for the period between the date upon which the claim is filed and the date of the decision granting compensation, but an appeal does stay the payment of compensation which has accrued between the date of injury and the date the claim is filed unless and until a final decision on appeal upholds the determination of the Administrator. In a case where compensation commences upon the determination by the Administrator of the validity of a claim, and the determination is later finally adjudicated against the claimant, the amount of the payments is charged to the surplus fund created under OHIO REV. CODE §4123.34(B). If the employer contributes to the State Insurance Fund such amounts are not charged to his experience, and if the employer self-insures under OHIO REV. CODE §4123.35, the employer is reimbursed from the surplus fund.¹⁷

Appeal from the decision of the Administrator may be had by either party upon the mailing¹⁸ of a notice of appeal to the Bureau of Workmen's Compensation, regional board of review or Industrial Commission, within twenty days from the date of mailing of the adverse decision. The notice must state the names of the parties, the claim number, the date of the adverse decision and the fact that the appellant appeals therefrom. Upon the filing of a notice of appeal the Industrial Commission assigns the claim for hearing before a regional board of review.¹⁹

The regional boards may exercise all of the powers and authorities which are vested in the Industrial Commission in OHIO REV. CODE, CHAPTER 4123.²⁰ Although the statute does not designate the manner in which the hearing shall proceed,²¹ it appears from the grant given as stated above that the boards are not bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure.²² However, the next preceding section,²³ providing for a pre-hearing conference between the parties, states that if the Commission or a board of review feels that a useful purpose will be served by a meeting of the parties such board or commission shall require the parties to confer with it or them in an endeavor to agree upon uncontroverted facts, to define the issues and *"to agree upon the documents, reports and records*

¹⁷ OHIO REV. CODE §4123.515.

¹⁸ Note the inconsistency of phraseology in the draftsmanship. OHIO REV. CODE §4123.515 uses the term "file" and OHIO REV. CODE §4123.515 uses "mailing" and "upon application".

¹⁹ OHIO REV. CODE §4123.516.

²⁰ OHIO REV. CODE §4123.14. Compare Ohio Rev. Code §4123.08.

²¹ OHIO REV. CODE §4123.518.

²² OHIO REV. CODE §4123.10.

²³ OHIO REV. CODE §4123.517.

*which shall be considered without further identification or proof ***."* If the Commission or board is not bound by common law or statutory rules of evidence, it is difficult to see the necessity for the agreement of the parties as to the stipulation of or waiver of competency of various types of evidence.

The parties to a hearing before a regional board are the claimant, the Administrator, who may be represented by the Attorney General and the employee, and such parties are given the opportunity to submit evidence. The board is required to reduce its findings to writing and to mail copies thereof to the claimant and the employer. The decision of a regional board of review stands as the decision of the Industrial Commission unless the Commission upon application of the Administrator, the claimant or the employer, made within twenty days after the date of mailing of the decision of the regional board, allows an appeal to the Commission.²⁴

Notice of the order of the Commission permitting or refusing to permit an appeal from a decision of a board of review must be dated and mailed on the same day that the decision was made. This order is mailed to the Administrator, the claimant and the employer. Parenthetically, it might be stated that with the volume of claims pending before the Industrial Commission, the mandatory duty of the Commission to mail copies of its findings on the same day that the orders were made may present a serious administrative problem.

Perhaps the most peculiar provision in the entire act is the declaration that the decision of a regional board of review shall be deemed to be the decision of the Commission, unless further appeal is taken within the time and in the manner provided by law. In most instances failure to prosecute an appeal from an administrative or judicial tribunal within the time and in the manner prescribed simply renders that decision final and bars further action. This may well be an attempt on the part of the legislature to assure the validity of the decisions of the regional boards of review as against constitutional challenge.²⁵

PROCEDURE WHEN RELIEF IS SOUGHT IN THE COURTS

For the first time since the inception of the Workmen's Compensation Law an appeal may be taken by the employer from an adverse decision of the Industrial Commission to the court of common pleas of proper venue. A like appeal may be had from a decision of a regional board from which the Commission has refused to permit an appeal to itself. Apparently the statute contemplates that such appeal shall be had, in such instance, from the order of the Commission denying appeal to itself. Such appeals, however, are limited to "injury" cases, and the

²⁴ OHIO REV. CODE §4123.516.

²⁵ *De Torio v. Industrial Commission*, 135 Ohio St. 214, 20 N.E. 2d 248 (1939) upholding the constitutionality of the creation of the regional boards of claims as provided for in OHIO REV. CODE §4123.14 (former OHIO GEN. CODE §1465-44a).

situation with respect to appeals in occupational disease claims remains the same as it did prior to the effective date of the new act. It is interesting to note at this point that the Administrator, if dissatisfied with the finding of the board of review, may appeal to the Industrial Commission, but may not appeal the adverse finding of the regional board or of the Commission to the court. Furthermore, the Administrator is always a party defendant in an appeal to the court, while the Industrial Commission is not, except on its own application, after the appeal is filed. Then, the Administrator may be in the peculiar position of defending an order which actually reversed his original decision and with which he disagrees.

The statute provides that the appeal may be perfected by the filing of a notice of appeal with the Industrial Commission and the proper court of common pleas within sixty days from the date of the mailing of the decision of the Commission appealed from or from the date of the order of the Commission refusing to permit an appeal from a regional board of review. The provisions for venue are identical with the provisions stated in former OHIO REV. CODE §4123.51, but the only order from which appeal may not be had is that wherein the decision of the Commission or board deals with extent and degree of disability.

The statute provides that the notice of appeal shall state the names of the claimant and the employer, who shall be parties, the claim number, the date of the decision appealed from and the facts that the appellant appeals from such decision. There is no provision for the certification to the common pleas court of any of the transcripts, journal entries or records of proceedings before the commission or regional board of review, and the provision for the filing of a petition as in former OHIO REV. CODE §4123.51, is no longer in the statute. Although the section does provide that upon the perfection of the appeal "further proceedings shall be had in accordance with the rules of civil procedure", considerable academic controversy has arisen over the necessity, or lack thereof, for pleadings to be filed in court. As a practical matter, common pleas courts may require the filing of some paper in the nature of a petition in appeal, setting forth the grounds of the appeal and the order appealed from and the basis for the validity or lack of validity of the claim.

It is the duty of the Commission upon receipt of the notice of appeal to give notice to all parties who are appellees that an appeal has been taken.

Although the statute prescribes that further proceedings following the filing of a notice of appeal shall be had in accordance with the rules of civil procedure, controversy has already arisen over the exact procedure in trial. Other than this statement, the only help to be found in the statute is the bare pronouncement "the court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of such action." Arguments have been advanced that this provision contemplates a return to the pro-

ceedings had under former OHIO GENERAL CODE §1465-90, prior to the 1925 amendment²⁶ (which amendment established the system of trial on the rehearing transcript) and that the case is to be tried *de novo*. On the other hand, the proposition has been advanced that the function of the court on appeal is merely a scrutiny of the proceedings below and a determination as to the validity of the order complained of. This argument appears to be outweighed by the fact that the statute is silent as to the certification of any transcript of proceedings, or of any records, of the tribunal from which the appeal is taken, and it is difficult to conceive that this is the legislative intent when the statute provides for fact-finding by a jury.

The trial court certifies its decision to the Industrial Commission and the certificate is entered in the records of the court and appeal from the judgment is governed by the law applicable to appeals in civil actions. If the claimant prevails in an appeal to the court, the Administrator shall thereafter proceed in the claim as if the judgment were the decision of the Commission, subject to the power of modification provided by OHIO REV. CODE §4123.52. The language in this portion of the statute differs from the language used relative to the same subject in former OHIO REV. CODE §4123.51, wherein it was provided that "notwithstanding the judgment rendered, the Commission may modify or revoke a finding that the claimant is permanently and totally disabled if it finds on evidence that the claimant is thereafter capable of doing work." It might be argued with some force that this change deprives a prevailing claimant on appeal of the finality of judgment.

Probably the most serious question facing any appellant under the provisions of this section is the glaring lack of statutory directive with respect to the service of process. The statute seems to contemplate that the only requisite to a prosecution of the appeal is the filing of the notice of appeal with both the Industrial Commission and the court of common pleas. However, in the case of a self-insuring or non-complying employer, either of whom has a direct financial interest in the outcome of the appeal, as contrasted with the state fund employer, whose interest is indirect and remote,²⁷ the question immediately presents itself as to the validity of a claimant's judgment when service is had only upon the Administrator.

OHIO REV. CODE §4123.519 also contains "non-savings" clauses which except claims pending before the Commission on the effective date of the act from the operation of OHIO REV. CODE §1.20. All claims pending determination by the Commission and all claims denied within thirty days prior to the effective date of the act are deemed to be pending before the Commission on appeal as provided in OHIO REV. CODE §4123.516. Likewise, claims pending on rehearing wherein the evidence

²⁶ 111 OHIO LAWS 227 (1925).

²⁷ *Copperweld Steel Co. v. Industrial Commission*, 142 Ohio St. 439, 52 N.E. 2d 735 (1944).

has not been completely submitted for and against the claim are governed, as to procedure, by the new act. All claims denied by the Commission upon rehearing under former OHIO REV. CODE §4123.51 and all actions pending in courts of common pleas upon petitions under that section are not affected by its repeal.

An appeal by an employer to the court does not stay the payment of compensation under an award during the pendency of the appeal. In the event the decision of the Commission is reversed and the employer prevails, the claim is excluded from consideration in determining the merit-rating of such employer, and in the case of a self-insuring employer, reimbursement is made from the surplus fund.

In the event an employer appeals to the Commission or court, and if upon the deciding of the appeal the Commission or court finds that the employer appealed for purposes of delay or other vexatious reason and without reasonable grounds, the Commission or court may assess a penalty against the employer not to exceed seven hundred and fifty dollars nor ten per cent of the total amount of the award in question. This penalty is paid to the claimant.

If any interested party to whom a notice is mailed under OHIO REV. CODE §§4123.513 to 4123.516 inclusive and §4123.518 fails to receive such notice, the Industrial Commission upon hearing may determine that such failure was due to causes beyond the control and without the fault and neglect of such person and his representative, and in the event of such a determination the interested party may take the action that would have been afforded to him had he received proper notice. Such action must be taken within five days after the determination of the Industrial Commission.²⁸

CHANGES IN BENEFITS

Compensation rates were increased by the new act to a maximum of forty dollars and twenty-five cents per week and a minimum of fourteen dollars per week. In the case of compensation for temporary total disability the maximum eligibility period is increased from six to ten years from the date of injury, and the maximum allowed for such disability is now eight thousand dollars as contrasted with six thousand dollars.²⁹ In cases of partial disability, where the employee elects to receive compensation on the basis of impairment of earning capacity, the aggregate amount to which he is entitled has now been increased to seventy-five hundred dollars from a previous maximum of four thousand dollars.³⁰ In cases where the employee elects to receive compensation for partial disability on the basis of percentage of physical disability, the statute now reads as follows: "The award made under this division (B) shall be that part of eight thousand fifty dollars which is the percentage of the employee's permanent physical disability resulting from the injury determined as aforesaid. Such award shall be paid prospectively in weekly

²⁸ OHIO REV. CODE §4123.522.

²⁹ OHIO REV. CODE §4123.56.

³⁰ OHIO REV. CODE §4123.57(A).

installments of sixty-six and two thirds per cent of the average weekly wage not to exceed a maximum of forty dollars and twenty-five cents per week" The only change here is in the manner of payment of the award and there is no increase in the ultimate total.³¹ The only change made in the statutory schedule is the blanket increase of the maximum and minimum amounts of compensation that may be paid.³² The aggregate amount of compensation to which a claimant may be entitled under division (A), (B) and (C) of OHIO REV. CODE §4123.57, has now been increased from seventy-five hundred to ten thousand dollars, and the provision of the same section that "in no event shall an employee who has elected to continue to receive compensation for impairment of earning capacity for more than fifty-two weeks as provided in division (A) of this section be entitled to receive more than four thousand dollars under any one or more provisions of this section" has now been deleted from the statute. This deletion plus the increase in the maximum amount of compensation payable where the employee elects to take compensation on the basis of impairment of earning capacity, as well as other changes in division (B) of the same section which will be discussed *infra*, indicate an apparent legislative attempt to discourage claimants from electing to take under the provisions of paragraph B of the section. This provision, sometimes referred to as "80-B", has been the most controversial provision in the workmen's compensation act for a considerable number of years.

Also amended was that portion of the partial disability statute providing for partial disability benefits when a silicotic has had a change of occupation recommended by the silicosis referees. The statute now provides for a rate of forty dollars and twenty-five cents per week for a period of thirty weeks commencing as of the date of discontinuance of his employment or change of occupation, and provides under the loss of wages provision of that section for a maximum of twenty-five dollars per week for a period of seventy-five weeks immediately following the expiration of such thirty week period.³³ Permanent total disability benefits have also been raised to forty dollars and twenty-five cents per week maximum with a minimum of twenty-five dollars per week.³⁴

Death benefits have been increased from a minimum of two thousand dollars and a maximum of nine thousand dollars to a minimum of

³¹ OHIO REV. CODE §4123.57(B). But by the change in the formula, the claimant now receives a percentage of \$8050, rather than a percentage of 250 weeks multiplied by \$32.50. If a claimant is eligible to receive his award at the maximum weekly rate, the value in dollars to him is not increased by the new act. However, if a claimant is not eligible to receive the maximum weekly rate, he still receives that part of \$8080 which is his percentage of physical disability. This will result in a windfall to the claimant who has a low average weekly wage.

³² OHIO REV. CODE §4123.57(C).

³³ OHIO REV. CODE §4123.57(D). See *State ex rel. Nemeth v. Industrial Commission*, 161 Ohio St. 179, 118 N.E. 2d 541 (1954).

³⁴ OHIO REV. CODE §4123.58.

four thousand dollars and a maximum of twelve thousand dollars.³⁵ There has been no increase in the amount provided for funeral expenses in death cases. The total aggregate amount of compensation that may be paid to a decedent prior to his death and to his dependents subsequent to his death now has a maximum limit of twelve thousand dollars except as provided in division (B) OHIO REV. CODE §4123.59.

The Industrial Commission is now empowered to disburse moneys from the state insurance fund to replace eye glasses damaged in the course of an industrial injury if the claimant is wearing the glasses at the time of the injury.³⁶

SUBSTANTIVE CHANGES IN THE PERMANENT PARTIAL DISABILITY STATUTE

OHIO REV. CODE §4123.57(A), the employee is now given the right to elect whether compensation shall be awarded to him under division (A) or division (B) of the section regardless of the percentage of physical disability. Under the former section this right of election was applicable only if the percentage of physical disability was determined to be twenty-five per cent or more. If the right of election was not applicable the employee was required to receive his award under division (B).

The portion of the section dealing with "deemed" elections has now been deleted and the claimant, to receive an award under either division (A) or division (B) must make an election. If no election is made the claim remains static. Under the old law if the claimant did not make an election within thirty days after receipt of notice of the determination of the percentage of disability, he was deemed to have elected to receive his award under division (B).

That portion of division (B) dealing with the provisions governing eligibility for benefits under that section has been completely revised. The statute now provides that the determination of the claimant's permanent physical disability is to be based upon the pathological condition resulting from the injury and causing the permanent physical impairment as evidenced by medical or clinical findings reasonably demonstrable. If the clinical findings are based solely on the testimony of the claimant without corroboration by objective medical findings, the Commission *shall* cause a medical advisory board to determine whether the employee is physically disabled and the determination of the medical advisory board including its determination, if any, of the percentage of physical disability of the employee is binding upon the Commission.³⁷ Awards under this paragraph will now be paid prospectively, the first payment being for the week following the allowance of the award under this division pursuant to the employee's election to receive the award. This limitation applies regardless of when the right to the compensation accrued.

The Industrial Commission, under special circumstances when it is

³⁵ OHIO REV. CODE §4123.59.

³⁶ OHIO REV. CODE §4123.66.

³⁷ Compare this declaration of the finality of recommendation of the medical advisory boards with that expressed in OHIO REV. CODE §4123.151.

deemed advisable in the best interests of the claimant, may commute payments under this division to a lump sum. In the event the commutation is for the purpose of paying fees for services rendered in the prosecution of the claim, the commission is required to hold a hearing and fix the amount of the fees.

For the purpose of aiding the practitioner, the following chart outlines the various appellate steps necessary in a contested claim.

<i>Code Section</i>	<i>Order Appealed From</i>	<i>Where Appealed</i>	<i>Time Limit</i>
(1) §4123.513	Order of Administrator allowing claim.	Reconsideration by Administrator. NOTE: Optional date of mailing of order. step — may be by-passed—See Step 4 below.	Within 9 days after date of mailing of order.
(2) §4123.514	Tentative order of Administrator allowing claim (appeal by employer only).	To hearing before Administrator.	Within 10 days after date of mailing of notice to employer.
(3) §4123.515	Decision of Administrator on disputed claim.	Reconsideration by Administrator. NOTE: Optional date of mailing of decision. step — may be by-passed—See Step 4 below.	Within 9 days after date of mailing of decision.
(4) §4123.516	(a) Decision of Administrator or (b) Denial by Administrator of application for reconsideration or (c) Decision of Administrator on reconsideration.	Regional Board of Review.	Within 20 days after date of mailing of decision of notice.
(5) §4123.516	Decision of Regional Board of Review.	Industrial Commission.	Within 20 days after date of mailing.
(6) §4123.519	(a) Decision of Regional Board of Review from which appeal refused by Industrial Commission or (b) Decision of Industrial Commission on appeal.	Common Pleas Court.	Within 60 days after date of mailing of order.

Although it may not be apparent from the foregoing chart, the new appellate procedure was ostensibly enacted to simplify and speed the hearing and processing disputed claims. It is difficult to determine the rationale behind the theory that by the substitution of nine appellate steps for three, expeditious handling and adjudication of claims will result, particularly when the same system of court appeals was discarded some thirty years ago as being outmoded. Under the old *de novo* proceedings trial dockets were so crowded with industrial commission appeals that it was difficult for ordinary litigants to have their cases tried. With the increasing crowding of the dockets, some apprehension may be felt as to what will happen when literally thousands of workmen's compensation cases, with statutory precedence, will be assigned to the trial dockets of the various counties.

The only insight that might be had as to the legislative intent in the revision of the appeals procedure is that during committee hearings on the bill, it was apparently the feeling of some members that by increasing the number of administrative hearings and by more directly including the employer as a party, more and earlier "settlements" would be had. This indicates either a change in, or a lack of grasp of the philosophy upon which the act is premised. The original intent behind the act was that once the right to participate was established the claimant was to have the continuing protection of the act and was to be considered the ward of the Commission. To draft legislation that is intended indirectly to coerce these litigants into a compromise or surrender of their rights, particularly in the field of this type of social legislation, would indicate a trend away from the spirit of liberalism in which this law was enacted and in which it has been applied since its passage.